

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Office of Financial and Insurance Regulation,

Enforcement Case No. 11-11375

Agency No. 12-027-L

Petitioner,

v

Kenneth Siebert,
System ID No. 0038769,

Respondent.

_____/

Issued and entered
this 29th day of August 2012
by Randall S. Gregg
Deputy Commissioner

FINAL DECISION.

I. BACKGROUND

Respondent Kenneth Siebert is a licensed, resident insurance adjuster. The Office of Financial and Insurance Regulation (OFIR) received information that Respondent was violating the Michigan Insurance Code of 1956 (Code), 1956 PA 218, as amended, MCL 500.100 *et seq.* After verification of information and multiple efforts to contact the Respondent, on May 1, 2012, OFIR issued a Notice of Opportunity to Show Compliance to the Respondent alleging that the actions of the Respondent had provided justification for revocation of licensure pursuant to Sections 249, 1224(3) and 1227(2) of the Code, MCL 500.249, 500.1224(3) and 500.1227(2). Respondent failed to respond to the notice.

On June 18, 2012, OFIR issued an Administrative Complaint and Order for Hearing (Administrative Complaint) which was sent to Respondent. The Order for Hearing required Respondent to take one of the following actions within 21 days: agree to a resolution of the case, file a response to the allegations with a statement that Respondent planned to attend the hearing, or request an adjournment. Respondent failed to take any of the required actions.

On July 19, 2012, OFIR staff filed a Motion for Final Decision. Respondent did not file a response to the motion. Given Respondent's failure to respond, Petitioner's motion is granted. The Administrative Complaint, being unchallenged, is accepted as true. Based upon the Administrative Complaint, the Commissioner makes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In 2007, the Consumer Services Division of OFIR (OFIR-CSD) received a complaint against Respondent wherein Respondent stipulated to the entry of a Consent Order with OFIR which found, among other facts, that on or about February 28, 2005, Respondent wrote a check for \$900 which was returned for non-sufficient funds.
2. On September 30, 2010, Respondent signed a contract agreeing to exclusively represent a contractor in the securing of a contract for repair work on a specific property in return for the payment of \$7,500 and accepted a payment of \$7,500, thereby collecting a fee from a repair contractor for obtaining repair work for the contractor.
3. Respondent gave the contractor a check post dated for November 30, 2010, and drafted against a closed account.
4. OFIR-CSD received a complaint from the contractor and investigated.
5. On May 31, 2011, OFIR-CSD initiated a proceeding by sending a letter requesting a response to the complaint via fax to Respondent at his fax number of record. The fax went through successfully. A copy of the letter was also sent to the Respondent's residential address of record. Respondent failed to respond.
6. Having received no response to the fax or letter, on June 24, 2011, OFIR-CSD successfully faxed a Notice of Failure to Respond to the fax number of record. The Notice was also sent via certified mail to the Respondent's residential address of record. The certified letter was returned to OFIR as unclaimed on July 19, 2011.
7. On July 13, 2011, a settlement offer for violation of Section 249 of the Code was sent via Certified Mail to Respondent's address of record.
8. During the week of August 11, 2011, OFIR-CSD called Respondent and left a voicemail at the home phone number of record. The call was never returned.
9. On September 12, 2011, the settlement offer sent on July 13, 2011, was returned as unclaimed. The returned certified letter was received by OFIR-CSD on September 20, 2011.
10. On November 21, 2011, OFIR-CSD resent the Failure to Respond letter via regular mail to the address of record. The letter indicated Respondent should sign the included stipulation and provide two written copies of a response to OFIR's inquiry.
11. On November 28, 2011, phone contact was made with Respondent and, at his request, a copy of the complaint filed against him was e-mailed to him.
12. On November 29, 2011, an email was received by Consumer Services Division of OFIR from Respondent which stated he "sign (sic) and sent agreement back" and that he had spoken with the Complainant and that they had reached an agreement. No response addressing OFIR's inquiry was included. Moreover, on December 28, 2011, Consumer

Services Division of OFIR contacted Complainant and received information that the Respondent had agreed to pay a portion of the funds owed to Complainant, but had not followed through.

13. OFIR did not receive the settlement agreement Respondent indicated he would sign and send back.
14. Section 1227(2) of the Code, MCL 500.1227(2), states:

An adjuster for an insured shall not collect or attempt to collect a fee or charge from a repair contractor for obtaining repair work for the contractor.
15. Respondent violated Section 1227(2) of the Code, MCL 500.1227(2), by signing a contract agreeing to exclusively represent a contractor in the securing of a contract for repair work on a specific property for the payment of \$7,500 and accepted a payment of \$7,500, thereby collecting a fee from a repair contractor for obtaining repair work for the contractor.
16. Section 1224(3) of the Code, MCL 500.1224(3) states in part,

After examination, investigation, and interrogatories, the commissioner shall issue a license to an applicant if the commissioner determines that the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance with which the applicant will deal, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an adjuster, possesses a good business reputation, and possesses good moral character to act as an adjuster.
17. Section 1200 of the Code defines good moral character "as defined and determined under Act No. 381 of the Public Acts of 1974, as amended, being section 338.31 to 338.47 of the Michigan Compiled Laws."
18. Section 1(1) of Act No. 381 of the Public Acts of 1974, as amended, MCL 338.41(1), defines good moral character as meaning, "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."
19. By signing a contract with a contractor agreeing to exclusively represent the contractor in the securing of a contract for repair work on a specific property in return for the payment of \$7,500 and accepting a payment of \$7,500, Respondent violated the code and demonstrated a lack of good moral character, showing he is unable to serve the public in a fair, honest and open manner.
20. By not following through on his statements both to OFIR and to the Complainant that he would pay funds owed to Complainant, Respondent demonstrated a lack of good moral character and that he is unable to serve the public in a fair, honest and open manner.

21. By repeatedly writing bad checks in the course of his business practices, Respondent has demonstrated a lack of good moral character and that he is unable to serve the public in a fair, honest and open manner.
22. Based on Respondent's failure to demonstrate good moral character through his repeated drafting of bad checks and his inability to conform his practice to lawful requirements, continued licensure of the Respondent is a danger to the public welfare.
23. Section 249 of the Code, MCL 500.249, states:

For the purposes of ascertaining compliance with the provisions of the insurance laws of the state or of ascertaining the business condition and practices of an insurer or proposed insurer, the commissioner, as often as he deems advisable, may initiate proceedings to examine the accounts, records, documents and transactions pertaining to:

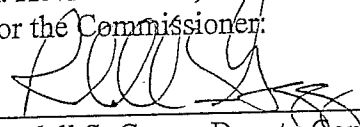
(a) Any insurance agent, surplus line agent, general agent, adjuster, public adjuster or counselor.
24. By not providing the written response to OFIR's inquiry regarding the complaint filed against him, Respondent violated Section 249(a) of the Code.

III. ORDER

Based on the Respondent's conduct and the applicable law cited above, it is ordered that:

1. Respondent shall cease and desist from violating those provisions of the Code.
2. Respondent shall immediately cease and desist from engaging in the business of adjusting.
3. All insurance licenses of Kenneth Siebert are **REVOKED**.

R. Kevin Clinton, Commissioner
For the Commissioner:



Randall S. Gregg, Deputy Commissioner